

Presentation at the First Plenary Meeting
of the Advisory Committee on Acoustic
Impacts on Marine Mammals

3-5 February 2004

Bethesda, Maryland

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author(s) and does not reflect the view of the
Marine Mammal Commission or the Advisory
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Mammals.*



NGO Role in the Regulatory Process

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I. The NGO role in general

A. Congressional intent

1. NGOs play an essential role in environmental enforcement, as a representative of citizens, as an enforcer of statute and regulation, as support for federal agencies' enforcement, and as a check on decisions of the agencies themselves.
2. This role was established through the Administrative Procedure Act and through citizens' suit provisions in individual statutes (e.g., the Endangered Species Act), by a Congress mindful of the limits of agency resources, the unrepresentative nature of agencies of the Executive branch, and the investment of the public in the outcomes of agency decisions.
3. NGOs have the right to participate in the administrative process through public hearings and public comment. This role was established through the Administrative Procedure Act and through specific provisions in individual statutes (e.g., the Marine Mammal Protection Act), for many of the same reasons discussed above.

B. Limitations

1. Notice and comment provides only limited (and often ineffective) opportunity for participation.
2. Enforcement comes at the back-end of the regulatory process and is limited to individual matters, though the outcome of an individual case may hold broader implications for other cases.

3. NGOs have limited resources and access to information
4. NGOs are often viewed as outsiders to the process, secondary to the agency or applicant, and even adverse to the efficient functioning of the administrative process

II. The NGO role specifically

- A. Administrative advocacy
- B. Stakeholder processes -- Established by Congress through specific statutory provision (e.g., take-reduction teams established under the fisheries provisions of the Marine Mammal Protection Act; FACA processes).
- C. Citizen action – Public education, activism
- D. Media communication
- E. Scientific analysis/input/reports
- F. Coalition building/coordination/mediation
- G. Legislative advocacy (MMPA, ESA)
- H. Litigation

III. NRDC and the regulation of ocean noise

- A. Ship Shock – NRDC v. Navy (1994)
- B. Acoustic Thermometry of Ocean Climate (1994-95)
- C. Exxon/HESS (1995-97)
- D. Low Frequency Active Sonar – NRDC v. Evans (1995-2003)
- E. Pulsed Power (1999)
- F. Sounding the Depths: Supertankers, Sonar, and the Rise of Undersea Noise (1999)
- G. Littoral Warfare Advanced Development – NRDC v. Navy (2002)
- H. Winston Churchill Ship Shock (2003)
- I. Misc.: MMPA reauth, mid-range sonar, Range Expansions, GOM HESS

IV. Conclusion